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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,179

08/18/2003

Gregory C. Copeland

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EXAMINER

CORRIELUS, JEAN B

ART UNIT

PAPER NUMBER

2611

NOTIFICATION DATE

DELIVERY MODE

12/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

<i>Advisory Action Before the Filing of an Appeal Brief</i>	Application No. 10/643,179	Applicant(s) COPELAND, GREGORY C.	
	Examiner Jean B. Corrielus	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): 101 rejection and art rejection.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 4-14, 18-27 and 30-35.
 Claim(s) objected to: _____.
 Claim(s) rejected: 36-37.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 2. Applicant's arguments filed 12/2/09 have been fully considered but they are not persuasive. Applicant argues that the limitation "transmitting a spread spectrum communication signal", recited in claims 18, 22 and 23 represents a "concrete thing" that can be measured and therefore requires a machine. However, examiner notes that such limitation is only recited in the preamble. Limitations recited in the preamble do not carry any patentable weight unless the body of the claim makes reference to such a limitation. Secondly, Applicant further argues that the step of applying and associated limitations represent a transformation of the signal into a compressed stream which is a transformation of a concrete thing from one state to a different state or thing. However, examiner notes that the step of applying performs processing on a signal per se and produce a compressed symbol stream which is nothing but a signal per se. There is no actual transformation by the step of applying and associated limitation to transform the signal per se into a different state or thing other than a signal per se.

Thirdly, applicant further argues that the step of amplifying and associated limitations represent a transformation of the signal into an amplified modulated signal which is a transformation of a concrete thing from one state to a different state or thing. However, examiner notes that the step of amplifying performs processing on a signal per se and produce an amplified signal which is nothing but a signal per se. There is no actual transformation by the step of amplifying and associated limitation to transform the signal per se into a different state or thing other than a signal per se.

However, Examiner notes that the limitation step "amplifying" and associated limitations can only be performed by a machine. Thus claims 18, 22 and 23, reciting such limitations are "tied" to a machine or apparatus, as required by "Bilski". Accordingly, the outstanding 101 rejection is hereby withdrawn.

Applicant's response did not fully address the 112 rejection of claim 26. The claim recites "a plurality of cancellation pulse generators", without the necessary connection between each of the pulse generator and/or other pulse generators and/or other components

/Jean B Corrielus/
Primary Examiner, Art Unit 2611

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)

Advisory Action Before the Filing of an Appeal Brief

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